AMERICAN RESOURCES, LTD.

IBLA 79-215 (Supp.) Decided February 9, 1981

Appeal from decision of the California State Office, Bureau of Land Management, declaring mining claims null and void ab initio; supplemental proceedings following recommended decision by Administrative Law Judge Dean F. Ratzman.

Affirmed in part, reversed in part, recommended decision adopted.

1. Mining Claims: Generally--Mining Claims: Lands Subject to

   BLM's decision declaring mining claims null and void ab initio will be vacated where it appears that the claims were located on lands which were open to mineral entry on the date of location.

2. Mining Claims: Generally--Mining Claims: Location-- Mining Claims: Relocation

   In the absence of a showing that a person holds a written deed giving him legal title to mining claims which have apparently been abandoned, the person's filing notices of location in his own name is properly regarded as a "relocation" of the claims, that is, the initiation of new claims which are adverse to the previous claims. Where a person has "relocated" mining claims, these claims date from the time of relocation and do not relate back to the date of location of the earlier claims.

3. Mining Claims: Generally--Mining Claims; Lands Subject to--Mining Claims: Withdrawn Land

Mining claims located on lands withdrawn from mineral entry are null and void ab initio.

APPEARANCES: Allen D. Shugar, Esq., Los Angeles, California, for appellant; John W. Burke III, Esq., Office of the Field Solicitor, U.S. Department of the Interior, for respondent Bureau of Land Management; O. K. Sharp, Hemet, California, for respondent Clyde F. McGuire.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On December 11, 1979, this Board vacated a decision by the California State Office, Bureau of Land Management (BLM), which declared the New Dawn Nos. 1-6 lode mining claims null and void ab initio. American Resources, Ltd., 44 IBLA 220 (1979). We held therein that it appeared that the New Dawn claims were originally located in 1958, long after the lands were withdrawn from mineral entry and included in the Joshua Tree National Monument in 1936. However, we held, under the rule announced in United States v. Consolidated Mines & Smelting Co., 455 F.2d 432, 441 (9th Cir. 1970), it was necessary to inquire further into the question in view of American Resources' assertion that the claims predated this withdrawal. Accordingly, we referred the matter to the Hearings Division to conduct a hearing to ascertain whether American Resources was the successor to an unbroken chain of legal title extending back before the withdrawal of the lands in 1936.

On June 10, 1980, Administrative Law Judge Dean F. Ratzman convened a hearing in Riverside, California. American Resources and BLM appeared at this hearing through counsel and presented testimony and evidence concerning the history of title to these claims. Clyde F. McGuire also appeared on his own behalf and was recognized as a protestant, in view of his assertion of present ownership rights to these claims.

On August 19, 1980, Judge Ratzman issued a recommended decision based on the evidence presented at this hearing, in which he concluded that American Resources did not succeed to rights instituted prior to the withdrawal of the lands from mineral entry, and that Clyde McGuire had "relocated" the claims in 1958 by topfiling notices of location in his own name. Judge Ratzman recommended that the New Dawn Nos. 3 through 6 claims be declared null and void ab initio in full and that the New Dawn No. 2 be declared null and void ab initio in part. Judge Ratzman also noted that the New Dawn No. 1 claim is not within the Joshua Tree National Monument and concluded that it was not necessary to review the history of its title. Accordingly, he did not recommend that it be declared null and void.

American Resources (appellant) and BLM have filed comments on this recommended decision. Clyde F. McGuire has petitioned to intervene before this Board and to file his comments on this decision. Although McGuire may well have agreed to convey all his interest in these claims to appellant, he has retained enough of an interest to grant him standing in this proceeding, and we recognize him as a party here.

[1] The New Dawn No. 1 claim is apparently situated entirely outside the Joshua Tree National Monument in sec. 14, T. 2 S., R. 12 E., San Bernardino meridian. 1/ This section was withdrawn from mineral entry on August 10, 1936, by Proclamation No. 2193, which created the Joshua Tree National Monument. However, sec. 14 was reopened to mineral location by the Act of September 25, 1950.

Clyde F. McGuire filed a notice of location for the New Dawn No. 1 claim in his own name on January 26, 1958, at which time the lands were apparently open to mineral entry. Accordingly, BLM's decision of December 13, 1978, is vacated insofar as it declared the New Dawn No. 1 claim null and void ab initio.

A small portion of the New Dawn No. 2 claim is also apparently in sec. 14 outside Joshua Tree. Therefore, BLM's decision is also vacated insofar as it declares this portion null and void ab initio. We make no finding as to whether this portion conforms to the restrictions on the configuration of a lode claim, or whether a qualifying discovery of a valuable mineral deposit has been discovered thereon.

[2] We adopt Judge Ratzman's recommended decision to affirm BLM's decision as to the remaining portion of New Dawn No. 2 and as to the New Dawn Nos. 3 through 6 claims. The record reveals at least one distinct break in the chain of title from appellant's present holdings back to any holdings established prior to the withdrawal of the lands in 1936 in each case.

Appellant has succeeded to whatever interest it has in these claims from Clyde McGuire as a result of an agreement with him on March 5, 1975, under which he agreed to sell his interest in these claims to S. W. Netolicky, who in turn deeded his interest to appellant. McGuire denies the effectiveness of his agreement to transfer title to appellant and asserts, as to appellants, that he retains title to the claims. In either case, the nature of McGuire's interest is the focus of our concern.

1/ The parties so stipulated at the hearing (Exh. C; Tr. 6). Presumably, BLM has verified this fact by comparison with the official survey of the area.

The record establishes that McGuire did not receive legal title to these claims from any preceding owner of them. McGuire first occupied and worked the claims in 1955 under authority of a lease agreement with Mission Mining Corporation, the apparent owner of several mining claims 2/ covering the area in question in 1955. However, by his own admission at the hearing, McGuire never purchased 3/ nor received title to the claims by deed from Mission Mining Corporation. 4/ Rather, it is clear from McGuire's testimony that, after 3 years of occupancy as a tenant under his lease with Mission Mining Corporation, he intended to initiate new claims in his own name, as he felt that Mission Mining

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2/ In 1955, the claims were known as follows: New Dawn No. 1 as Lone Star No. 1; New Dawn No. 2 as Lone Star No. 2; New Dawn No. 3 as "No-name"; New Dawn No. 4 as Water Well No. 1; New Dawn No. 5 as Water Well No 2; and New Dawn No. 6 as Water Well No. 3.

3/ McGuire testified as follows:

"Q. Now, when you started working these claims in 1955, what sort of agreement were you working under?

"A. A lease, 10 per cent lease.

"Q. Did that lease have an option to buy?

"A. Yes, I believe it did. I'm not sure. I'm not sure if it had an option to buy or not.

"I'm sure that as we talked, we had an option to buy, because we talked about buying it. But we just couldn't make it." (Tr. 35).

4/ "Q. Did you ever obtain the 1958 or 1959 title to the Mission Mining Company's claims?

"A. Title?

"Q. Title to the Mission Mining Company's claims.

"A. No.

"Q. New Dawn 1 through 6?

"A. No, I didn't have title." (Tr. 36). This testimony is corroborated by that of appellant's representative, Joei Netolicky, that she had never seen a deed from Mission Mining Corporation to McGuire, and that she had presumed that there was an oral agreement (Tr. 27-28). It is also supported by the absence of any such deed in the record.

Corporation had abandoned them. 5/ The present record also reveals numerous other gaps in the chain of title. 6/

Where a person files notices of location for lands covered by earlier mining claims which have been abandoned, this action is properly regarded as adverse to those earlier claims unless the person is the grantee in a conveyance of legal title to the earlier claims. See Janelle R. Deeter, 34 IBLA 81, 83-84 (1978). In other words, McGuire "relocated" these claims in 1958, that is, he established his own claims to these lands which were adverse to whatever interests Mission Mining Corporation or anyone else had in these lands. Accordingly, he cannot relate the date of recording of his claims back to the date of recording of the earlier claims. American Resources, Ltd., supra at 223; Janelle R. Deeter, supra, at 83-84. At best, his and appellant's interests date back only to 1958 when McGuire relocated them. 7/

5/ "Q. Was it your purpose in 1958 when you filed the location notices for the New Dawn claims to establish your own claim to the property?

"A. Establish my rights to it. I'd hoped that later on I could get a deed, a quitclaim deed, since they had abandoned them.

"Q. Now, was there a reason for changing the name?

"A. If there was nobody on the claims, nobody but me making the assessment work on them, they figured that I could -- I could claim them. * * * * * * *

"Q. Would it be fair to characterize, then, that in 1958 you established in your own name your independent location of those --

"A. In my own mind, yes." (Tr. 36-37).

6/ Huff and Lane, the original locators of the claims, deeded their interests in 5 of these claims to Clyde N. Gordon and Spencer S. Purkey in 1931, and there is no indication that they ever returned these interests to him. Thus, Huff could not have given Mission Mining any interest in these 5 claims, as he had no title to give, which may explain why the record contains no deed completely transforming these interests from Huff to Mission Mining. Huff did not deed title to the sixth claim (the "No-name" claim) to Gordon and Purkey in 1931 and did actually deed it to Mission Gold Mining Co., a partnership. However, the partnership never deeded this interest either to Mission Mining Corp. or to McGuire. Thus, the chain of title for each claim does not extend from Huff to McGuire.

7/ Of course, it is the object of the familiar "Statute of Frauds" to require that conveyances of interests in real property must be written, rather than oral.

[3] It is established that claims located on lands which are closed to mineral entry are null and void ab initio. Leo J. Hottas, 73 I.D. 123 (1966), aff'd sub nom. Lutzenheizer v. Udall, 432 F.2d 328 (9th Cir. 1970); Gerald Bryon Bannon, 40 IBLA 162 (1979); Janelle R. Deeter, supra at 81. The lands on which McGuire located the New Dawn claims in 1958 were withdrawn from mineral entry and are therefore null and void ab initio.

Finally, we note that any interests in the claims dating back to Huff's original location in 1931 (now perhaps held by his heirs and the heirs of Gordon and Purkey) have been presumptively abandoned and are void, owing to their owners' failure to record copies of the notices of location and proof of labor as required by section 314 of the Federal Land Policy and Management Act of 1976, and 43 CFR 3833.2 and 3833.4. Accordingly, any effort to gain title to these claims by purchase or otherwise would now be fruitless.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the recommended decision of Administrative Law Judge Ratzman is adopted, and the decision appealed from is affirmed in part and vacated in part.

Edward W. Stuebing
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge